

ESTTA Tracking number: **ESTTA573835**

Filing date: **11/29/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Inhale, Inc.		
Entity	Corporation	Citizenship	California
Address	8616 Cuyanaca St. Santee, CA 92071 UNITED STATES		

Correspondence information	Louis F. Teran SLC Law Group 1055 E. Colorado Blvd., Suite 500 Pasadena, CA 91106 UNITED STATES lteran@strategiclegalcounseling.com Phone:8184843217
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Applicant Information

Application No	85929488	Publication date	10/29/2013
Opposition Filing Date	11/29/2013	Opposition Period Ends	11/28/2013
Applicant	KSX ENTERPRISE, INC. 20895 Currier Rd. Unit B, Walnut, CA 91789 CANADA		

Goods/Services Affected by Opposition


Class 034. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Cigarette cases not of precious metal;
Cigarette lighters not of precious metal; Electric cigarettes; Hookahs

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4063774	Application Date	05/15/2009
Registration Date	11/29/2011	Foreign Priority Date	NONE
Word Mark	EXHALE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2007/06/01 First Use In Commerce: 2011/02/01 Hookah, hookah pipes, hookah bases, hookah tobacco, vaporizer, and water pipes

Attachments	77737661#TMSN.jpeg(bytes) Opposition Complaint.pdf(60943 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Louis F. Teran/
Name	Louis F. Teran
Date	11/29/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/929,488

Mark: NEVER XHALE

Filed: May 12, 2013

Published: October 29, 2013

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)	
INHALE, INC.,)	
)	
Opposer,)	
)	OPPOSITION NO: _____
v.)	
)	
)	
KSX ENTERPRISE, INC.,)	
)	
Applicant.)	
)	
)	

NOTICE OF OPPOSITION

Inhale, Inc. (“Opposer”), a corporation organized and existing under the laws of the State of California, believes that it will be damaged by registration of the mark shown in U.S. Application Serial No. 85/929,488 in International Class 034 (“the Application”) and hereby opposes the same.

As grounds for opposition it is alleged that:

Opposer's Background

1. Opposer is a manufacturer and distributor of tobacco products and smokers' articles. Opposer's address is 8616 Cuyanaca St.; Santee, California, 92071.

2. Opposer is the owner of U.S. Trademark Registration No. 4,063,774 for the mark "EXHALE" ("Opposer's Mark") for "Hookah, hookah pipes, hookah bases, hookah tobacco, vaporizer, and water pipes," in International Class 034 ("Opposer's Goods").

True and correct copy of the certificate of registration for Opposer's Mark is attached hereto as **Exhibit A**.

Applicant's Background

3. Opposer is informed and believes, and on that basis alleges that, applicant KSX Enterprise, Inc. ("Applicant") is a corporation organized and existing under the laws of the State of California, whose address is 20895 Currier Rd., Unit B; Walnut, California 91789.

4. Opposer is informed and believes, and on that basis alleges that, Applicant has designated Mr. Fei Pang of Law Offices of Fei Pang, 11 W. Del Mar Blvd., Suite #200; Pasadena, California 91105, as the representative upon whom notice of process for proceedings affecting Applicant's trademark application may be served.

5. Opposer is informed and believes, and on that basis alleges that, on May 12, 2013, Applicant filed U.S. Application Serial No. 85/929,488 for the mark "NEVER XHALE" ("Applicant's Mark") for "Cigarette cases not of precious metal; Cigarette

lighters nor of precious metal; Electric cigarettes; Hookahs” in International Class 034 (“Applicant’s Goods”). The Application was filed on an intent to use Applicant’s Mark in commerce, pursuant to Section 1(b) of the Lanham Act.

6. The USPTO published Applicant’s Mark for opposition in the Official Gazette on October 29, 2013.

7. Since Opposer’s Mark was registered on the Principal Register prior to the filing date of Applicant’s Mark, Opposer’s Mark has the presumption of validity and Opposer has priority over any rights claimed by Applicant for registration of Applicant’s Mark.

8. Opposer files this timely Notice of Opposition.

GROUND FOR OPPOSITION

Likelihood of Confusion Pursuant to 15 U.S.C. §1052(d)

9. The phrase “EXHALE” has no special meaning within the tobacco industry. Opposer’s Mark is therefore arbitrary or fanciful terms as applied to tobacco products that are afforded the highest level of protection.

10. Opposer is informed and believes, and on that basis alleges that, Applicant’s Mark, when used in conjunction with Applicant’s Goods, so resembles Opposer’s Mark, as to be likely to cause confusion, to cause mistake, and to deceive within the meaning of 15 U.S.C. §1052(d).

11. Opposer is informed and believes, and on that basis alleges that, the word “XHALE” is the dominant part of Applicant’s Mark. Therefore, Opposer is informed and

believes, and on that basis alleges that, Applicant's Mark, when used in conjunction with Applicant's Goods, so resembles Opposer's Mark, as to be likely to cause confusion, to cause mistake, and to deceive within the meaning of 15 U.S.C. §1052(d).

12. Opposer is informed and believes, and on that basis alleges that, the type of goods offered in conjunction with Applicant's Mark is similar or related to the type of goods offered in conjunction with Opposer's Mark.

13. Opposer is informed and believes, and on that basis alleges that, Applicant's Goods and Opposer's Goods are, or will be marketed to identical or similar groups of consumers.

14. Opposer is informed and believes, and on that basis alleges that, Applicant's Goods and Opposer's Goods are, or will be advertised, promoted, and/or sold through the same or similar channels of trade.

15. Opposer is informed and believes, and on that basis alleges that, Applicant's Goods and Opposer's Goods are, or will be targeted to the same general class of purchasers.

16. Opposer has no control over the nature and quality of Applicant's Goods that will be using Applicant's Mark, and any dissatisfaction with Applicant's Goods would reflect adversely on Opposer, thus damaging the goodwill and reputation Opposer has established in Opposer's Mark.

17. Registration of Applicant's Mark will further damage Opposer because the trademark sought to be registered, "NEVER XHALE", is so similar to Opposer's Mark,

that the use of Applicant's Mark will cause confusion or mistake, and is likely to deceive purchasers into the erroneous belief that Applicant's Goods and Opposer's Goods originate from the same source, or are authorized or sponsored by Opposer.

18. Opposer's customers, as well as the general public, are likely to be confused, mistaken, or deceived as to the origin or sponsorship of Opposer's Goods and Applicant's Goods. Based upon such likelihood of confusion, Applicant's Mark should be denied registration pursuant to 15 U.S.C. §1052(d).

WHEREFORE, Opposer prays that Application Serial No. 85/929,488 be denied registration.

Opposer hereby consents and appoints Louis F. Teran of the SLC Law Group, 1055 E. Colorado, Blvd., Suite #500, Pasadena, California 91106, who is a member of the Bar of the State of California, as its duly authorized agent and attorney to prosecute this Opposition and to transact all business in the Patent and Trademark Office in the United States Courts, to sign their name to all papers which may hereinafter be filed in connection therewith, and to receive all official communications in connection with this Opposition.

Dated: November 29, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. F. Teran', written over a horizontal line.

Louis F. Teran
Attorney for Opposer
Inhale, Inc.

Notice of Opposition
In the matter of Application Serial No. 85/929,488
Published On October 29, 2013

Louis F. Teran
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CERTIFICATION OF SERVICE

I certify that a copy of this NOTICE OF OPPOSITION is being served via USPS on
this the 29th day of November, 2013, to the following:

Applicant's Attorney/Representative:

Fei Pang
LAW OFFICES OF FEI PANG
11 W. Del Mar, Blvd., Suite #200
Pasadena, CA 91105

Applicant

KSX ENTERPRISE, INC.
20895 Currier Rd., Unit B
Walnut, CA 91789

A handwritten signature in black ink, appearing to read 'L. Teran', is written over a horizontal line.

Louis F. Teran

EXHIBIT A

United States of America
United States Patent and Trademark Office

EXHALE

Reg. No. 4,063,774

INHALE, INC. (CALIFORNIA CORPORATION)
8616 CUYAMACA ST.
SANTEE, CA 92071

Registered Nov. 29, 2011

Int. Cl.: 34

FOR: HOOKAH, HOOKAH PIPES, HOOKAH BASES, HOOKAH TOBACCO, VAPORIZER,
AND WATER PIPES, IN CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

TRADEMARK

FIRST USE 6-1-2007; IN COMMERCE 2-1-2011.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-737,661, FILED 5-15-2009.

ANNE FARRELL, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office